

**OPINION**  
**42-97**

October 10, 1942    (OPINION)

SCHOOL DISTRICTS

RE: Pupils - Residence

The questions you present can be answered only in a general way. The school boards in this state have considerable discretion in adjusting questions arising in connection with the opening and closing of schools.

Where schools are closed for economic reasons or lack of attendance, it is the duty of the board to furnish proper and convenient school facilities for the pupils from some other school. Such proper and convenient school facilities must be provided for the pupils in the territory of the school closed until such time as it may be reopened by the board. In determining what shall constitute proper and convenient school facilities the school board shall consider the distance of such child from the nearest school and all surrounding circumstances and the board may furnish transportation to such other school or pay an extra allowance for transportation or furnish the equivalent thereof in tuition or lodging in some other public school.

In case of dispute between patrons and the school board as to whether or not the school board shall furnish or arrange to furnish adequate facilities, the matter may be submitted by the patron to a board of arbitration consisting of the County Superintendent of Schools, one arbitrator named by the patron, and one arbitrator named by the school board, and the determination of such arbitrator, after hearing, shall be binding upon the school board.

As I have pointed out, the school board has considerable discretion as you will observe by reading the statute. I have particular reference to chapter 206 of the Session Laws of 1838, which you will find in the last supplement to the school laws. For your convenience I am sending you a copy of the compiled school laws, together with the latest supplement, and I would refer you to page 18 of the supplement.

When the school board has acted within the law according to its best judgment, there is nothing that this office can do. The board may take such action as in its judgment it deems best within the provisions of the law.

With reference to residence for school purposes, the word "residence" as used in the school laws is not synonymous with "legal residence". This question was before the Supreme Court of the state in the case of Anderson v. Breithbarth and in that case the court said:

"The word 'residence' as used in the school laws is not synonymous with 'legal residence'; it is not restricted to the domicile of the parents of the child,

but must be construed in a broader sense as meaning the actual residence of the child - the place which constitutes its home when not called elsewhere for temporary purposes, the place to which it returns in seasons of repose, whether with its parents or others. The policy of our school laws is not to shut out a pupil, but to compel attendance, and the laws should be liberally construed to carry out this practically universal American principle."

Their decision, however, differentiates between the situation where children come into the school district merely for the purpose of obtaining school privileges. The requirement for the payment of tuition governs in such cases, and it is immaterial whether the children come alone or the parents come with them. When the purpose of a nonresident is to obtain school privileges only, and maintains his residence in another district, then the law provided for tuition governs, but tuition may not be charged within the district of residence regardless of which school within such district the children attend.

The questions presented in your letter are largely within the discretion of the school board and this office has no authority to interfere with any decision the board may make where such decision is based upon facts peculiar to the local situation and where such decision is made in pursuance of the law governing the facts.

I am returning all of your correspondence herewith.

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Attorney General